

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

RONALD D. TOHN v. STATE OF TENNESSEE

Appeal from the Circuit Court for Perry County
No. 685 R. E. Lee Davies, Judge

No. M2006-01647-CCA-R3-HC - Filed January 9, 2007

This matter is before the Court upon the State's motion to affirm the judgment of the habeas corpus court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petitioner has appealed the habeas corpus court's order summarily dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas corpus court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Ronald D. Tohn, Pro Se, Nashville, Tennessee.

Paul G. Summers, Attorney General & Reporter; Rachel E. Willis, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On January 20, 2001, the petitioner escaped from the Perry County Jail where he was being held for three counts of aggravated sexual battery. The petitioner had been indicted for these charges on July 24, 2000. On March 25, 2002, the petitioner pled guilty to two counts of aggravated sexual battery and one count of felony escape. Pursuant to the plea agreement, the trial court sentenced the petitioner to a sentence of ten years for each of the aggravated sexual battery convictions to be served concurrently to each other and two years for the escape conviction to be served consecutively to the aggravated sexual battery sentences.

On May 15, 2006, the petitioner filed a “Motion to Dismiss Illegal Sentence and/or Petition for Writ of Habeas Corpus.” In the motion, the petitioner contended that his sentence for escape was illegal because it was run consecutively to his sentences for aggravated sexual battery, for which he had been neither convicted nor sentenced at the time he entered his plea for escape. The trial court treated this motion as a writ of habeas corpus and summarily dismissed the petition.

The petitioner now appeals the trial court’s summary dismissal of his petition. He argues once again that his escape sentence is illegal because it was ordered to run consecutively to his aggravated sexual battery sentences. As an apparent afterthought, the petitioner also states that his constitutional rights were violated. However, he does not explain how his constitutional rights were violated. Therefore, we only address his illegal sentencing issue.

Analysis

The trial court correctly chose to treat the petitioner’s motion as a petition for writ of habeas corpus because this is the proper vehicle to challenge an allegedly illegal sentence. The determination of whether to grant habeas corpus relief is a question of law. See McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). As such, we will review the habeas corpus court’s findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See Taylor, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner’s filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 19-20 (Tenn. 2004); Archer, 851 S.W.2d at 165. For the benefit of individuals such as the petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, is a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

"A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements." Hickman, 153 S.W.3d at 21.

The petitioner has not followed the statutory requirements for a habeas corpus petition. This in itself is sufficient reason for the habeas corpus court to dismiss the petition. However, there is also statutory support for the habeas corpus court's actions. Tennessee Code Annotated section 39-16-605(c) states, "Any sentence received for a violation of this section shall be ordered to be served consecutively to the sentence being served or *sentence received for the charge for which the person was being held at the time of the escape.*" (emphasis added). The petitioner's escape sentence was ordered to run consecutively to his aggravated sexual battery sentences, the charge for which he was being held at the time of his escape. Therefore, contrary to the petitioner's argument, the statute

clearly provides for his escape sentence to run consecutively to his aggravated sexual battery sentences. The petitioner's issue is without merit.

Conclusion

Rule 20 of the Rules of the Court of Criminal Appeals provides:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

(1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge,

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the habeas corpus court.

JERRY L. SMITH, JUDGE